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**Proposed Rule**

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**OFFICE OF MANAGEMENT AND BUDGET****5 CFR Part 1320****Controlling Paperwork Burdens on the Public; Proposed Rulemaking**

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule implements the provisions of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) concerning collections of information. The rule is designed both "to minimize the Federal paperwork burden for individuals, small businesses, state and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal Government." 44 U.S.C. 3501 (1), (3). The Office of Management and Budget (OMB) is seeking comments and suggestions on this proposal. When issued as a final rule, it will supersede OMB Circular No. A-40 (Management of Federal Reporting Requirements). This proposal will become effective upon publication of the final rule in the Federal Register, except that provisions applicable to information collection requirements in existing agency rules that have not previously been reviewed by OMB or the General Accounting Office, and are not assigned currently valid control numbers, will become effective on July 1, 1983.

**DATES:** Comments must be received on or before October 25, 1982.

**ADDRESSES:** Please address written comments to Mr. Nat Scurry, Reports Management Branch, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 2503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arnold Strasser, Reports Management Branch, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Telephone (202) 395-6680.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812, codified at Chapter 35 of Title 44 of the United States Code, authorizes the Director of the Office of Management and Budget to "promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." 44 U.S.C. 3516. This proposed rule implements that authority and contains guidelines, procedures, and interpretations of the Act OMB considers necessary for achieving the paperwork reduction goals established by Congress. Section 1320.16, concerning interagency reporting, also implements authority under the Federal Records Act and Section 104 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18a). The rule is designed both "to minimize the Federal paperwork burden for individuals, small businesses, state and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal government." 44 U.S.C. 3501(1), (3). The rule supersedes and rescinds the present Circular A-40, which was last revised in 1976, and which does not reflect changes made by enactment of the Paperwork Reduction Act of 1980.

The paperwork reduction process is an important element in the President's program of regulatory relief. The costs and inefficiencies associated with reporting and recordkeeping burdens imposed on the public are a significant impediment to economic growth, consumer satisfaction, full employment, and prosperity. Much of the information collection activity of the Federal government is, of course, necessary to the enforcement of laws and protection of the public. We can insist, however—and the Paperwork Reduction Act requires—that paperwork requirements not be imposed unless the practical value of the information is worth the imposition of the burden. This proposal sets out procedures for ensuring that all proposed collections of information face this stringent test.

OMB expects that implementation of the Paperwork Reduction Act through this rule will result in substantial reduction in the paperwork burden imposed on small businesses and other small entities by the federal government. Reporting and recordkeeping requirements often have a

disproportionate effect on small entities, with correspondingly lower practical value to the federal agency involved. Both in the general policy guidelines set out in § 1320.6 and in the individual clearance decisions under §§ 1320.11-1320.14, the special concerns of small entities are taken into account.

OMB has considered the terms of this proposed rule under Executive Order 12291. Although estimation of the economic effect of procedural rules such as this is necessarily subjective, it seems clear that substantive decisions by federal agencies will eventually be substantially affected, with a total gain to the economy of well over \$100 million. OMB has waived further regulatory impact analysis of this proposed rule under Executive Order 12291, however, because enforcement of the Paperwork Reduction Act through this rule is fully consonant with the objectives of the Executive Order. OMB believes that further attention to the cost-effectiveness and the criteria of the Executive Order should take place in the context of specific decisions made under this proposed rule.

This proposal is directed both to the public and to the federal agencies. Principal responsibility for implementation of the Act lies with OMB and the agencies. The public, however, also has an important role to play in restraining paperwork growth, both through the public protection provision of the Act, 44 U.S.C. 3512, and through the procedures for public participation provided by the Act and set forth in this proposal.

OMB has distributed an earlier draft of this rule, styled as OMB Circular No. A-40, to the agencies to provide them early and meaningful opportunity to comment, in accordance with Section 3517 of the Act. Twenty-seven departments and agencies submitted comments. This draft has been revised in many respects in response to those comments. At appropriate points in this preamble, certain specific agency comments will be addressed. On January 11, 1980, OMB published a notice of proposed rulemaking at 45 FR 2586, covering similar matters. That notice was under the authority of the Federal Reports Act of 1942 and Executive Order 12174. Because of the intervening passage of the Paperwork Reduction Act of 1980, which superseded and repealed the Federal

Reports Act, OMB did not issue a final rule based on the January 11, 1980 notice of proposed rulemaking. This notice incorporates pertinent portions of that earlier proposal. Therefore, OMB hereby withdraws the proposal published at 45 FR 2586.

Because of the importance of public participation, and in accordance with provisions of the Administrative Procedure Act governing informal rulemaking, OMB is soliciting comments on this proposal from the public, as well as from federal agencies. The comment period will last 45 days.

Among the significant features of the proposed rule are the following:

1. *Coverage and Related Issues.* In enacting the Paperwork Reduction Act of 1980, Congress made significant changes in the scope of OMB's paperwork control functions from that under the Federal Reports Act of 1942. The congressional intent to strengthen and expand the protections of the Federal Reports Act is reflected in the definitions of the key terms "information," "collection of information," and "information collection request" in the Act and in this proposed rule. The attention of the public should be particularly drawn to the following areas:

(a) Virtually all agency exemptions from coverage under the Federal Reports Act have been eliminated. Independent agencies, banking regulatory agencies, and the Internal Revenue Service, formerly excluded from OMB paperwork clearance requirements, are now included. The Act does not cover the information collection activities of the General Accounting Office, the Federal Elections Commission, the government of the District of Columbia, the governments of the United States territories and possessions, or federally-owned contractor-operated facilities. § 1320.3; see 44 U.S.C. 3502(1).

(b) The Paperwork Reduction Act covers all "collections of information," a term encompassing all means of obtaining or soliciting of facts or opinions by an agency, so long as the collection of information is imposed upon ten or more persons. 44 U.S.C. 3502(4). The term encompasses both "reporting"—providing information to the agency or to another person—and "recordkeeping"—compiling and maintaining information for a period of time. These terms are defined in § 1320.7. The term "collecting of information" encompasses oral and published means of collecting information as well as individually printed forms. Section 3504(h)—the section of the Act concerning proposed regulations—specifically and repeatedly

refers to "collection of information requirements contained in an agency rule." This dispels and doubt that the general term "collection of information" encompasses collections of information by means of regulation as well as by other exercises of agency authority. OMB's clearance and other paperwork control functions extend to all collections of information, whether responses are "voluntary, required to obtain a benefit, or mandatory." 44 U.S.C. 3504(c)(3), though voluntary collections need not display a control number.

OMB authority over "collections of information" extends to, *inter alia*, the development and implementation of Federal information policies under Section 3504(a) of the Act, the initiation and review of proposals for changes in agency regulations or in legislation under Section 3504(b)(2), the evaluation of the adequacy and efficiency of agency information management practices under Section 3504(b)(5), and the evaluation of the necessity of a collection of information under Section 3504(c)(2). The administrative and regulatory powers of the Director under Sections 3515 and 3516 also extend to implementation of the Act as a whole. Moreover, OMB's statutory goal of reducing the existing burden of Federal paperwork by 25% by October 1, 1983 applies to "collections of information" as a whole. 44 U.S.C. 3505.

The procedural modes for OMB paperwork clearance of different types of collection of information are defined by the Act. Information collection requirements contained in regulations undergoing notice and comment rulemaking are subject to clearance under Section 3504(h) of the Act; other information collection requests are subject to clearance under Section 3507. Further authority to initiate and review proposals for change in regulations is found in Section 3504(b). The substantive standards for OMB decisionmaking under these procedures are the same. Under both the "information collection request clearance" function of Section 3507 and the "other paperwork control functions" of Section 3504, OMB must determine "whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency." 44 U.S.C. 3504(c). Only the procedures to be followed differ.

This proposed rule has organized the provisions applicable to the several procedural modes just discussed into separate sections, to make the clearance and review functions easier to

understand. Section 1320.11 establishes policies and standards applicable to all of OMB's information collection request and other paperwork control functions. Section 1320.12 deals with the 3507 process of clearance of information collection requests. Section 1320.13 deals with the 3504(h) process of review of information collection requirements in proposed rules undergoing notice and comment rulemaking. Section 1320.14 deals with the 3504(b) process of initiating and reviewing proposals for changes in information collection requirements in existing regulations.

(c) The most difficult question of interpretation of the Act has proven to be the procedural mode for OMB review of information collection requirements contained in existing agency regulations but not implemented by means of forms, schedules, questionnaires, or similar written instruments. Examples of types of information collection activity covered by the Act but not implemented by forms are:

- Oral surveys.
- Requirements to keep or maintain specified records.
- Requirements to submit preexisting records to the agency.
- Requirements to provide information to persons other than agency officials.
- Requirements to submit information to the agency in a format to be selected by the respondent.

This question is of great practical importance because most such requirements are imposed by means of regulation. Control of these types of information collection activity was one of the major ways in which the Paperwork Reduction Act was viewed by Congress as strengthening the prior Federal Reports Act. If paperwork control under the Act did not extend to reporting and recordkeeping requirements in existing regulations, virtually all recordkeeping, and most of the other types of information collection listed above, would be exempt from scrutiny and burden reduction.

OMB initially concluded that reporting and recordkeeping requirements contained in existing regulations are "information collection requests" subject to clearance under Section 3507. This interpretation was reflected in the draft Circular distributed to agencies on June 4, 1982. The main reasons supporting this interpretation were: (1) That the term "information collection request" is statutorily defined to include "reporting or recordkeeping requirement[s]" (Section 3502(11)); (2) that the legislative history stresses that "recordkeeping requirements" (virtually

all of which are contained in regulations) are to be included "in the clearance process" (S. Rep. No. 96-930, at 13); and (3) that the clearance process of Section 3504(h) applies only to proposed rules undergoing notice and comment rulemaking (Section 3504(h)(8)). It seems to follow that the only way for OMB to perform its clearance duties with respect to reporting and recordkeeping requirements in existing regulations was to treat such requirements as "information collection requests" under Sections 3507 and 3504(c)(3) of the Act.

OMB's interpretation on this point gave rise to two legal difficulties: potential conflict with the Administrative Procedure Act in cases where OMB disapproves information collection requirements in existing rules, and potential inconsistency with the carefully-constructed procedures of Section 3504(h). OMB and the Department of the Treasury therefore requested the Office of Legal Counsel of the Department of Justice to address the question whether reporting and recordkeeping requirements in existing regulations are subject to Sections 3507 and 3504(c)(3) in the same manner as forms and similar "information collection requests."

The Office of Legal Counsel, in a memorandum dated June 22, 1982, rejected OMB's initial view of the proper means for reviewing reporting and recordkeeping requirements in existing regulations. It concluded that "requirements for the maintenance and provision of information contained in regulations that came into existence prior to the effective date of the Act are not subject to the information collection request approval procedures contained in §§ 3504(c) and 3507 of the Act." In summary, the memorandum reasoned: (1) That it would be inconsistent with the Administrative Procedure Act for OMB to be able effectively to rescind a provision of a regulation adopted after notice and comment, in the absence of further APA procedures; (2) that Congress did not intend to create a three-year "regulatory sunset" provision for information collection requirements in regulations, as OMB's interpretation might suggest; and (3) that for OMB to be able to review and disapprove information collection requirements in existing regulations under Section 3507 would vitiate the carefully-constructed procedures under Section 3504(h). At the same time, the Office of Legal Counsel memorandum repeatedly stressed that OMB had been given "broad powers by the Act to initiate and review proposals for changes in existing regulations and

to coordinate and improve agency information practices whether contained in regulations or elsewhere."

OMB recognizes the force of this reasoning, and has modified this proposal accordingly. The word "rule" has been deleted from the list of items encompassed by the term "information collection request," see § 1320.7(h), and OMB will not hereafter assert the authority to disapprove information collection requirements contained in existing rules adopted after public notice and comment without further notice and comment rulemaking procedures. Moreover, reporting and recordkeeping requirements in agency regulations will not automatically lapse in the absence of OMB reapproval at the end of the clearance period.

Nonetheless, as the Act and legislative history make clear, OMB's paperwork control functions necessarily extend to all reporting and recordkeeping requirements, however imposed. Failure to adopt a workable means for review and burden reduction of reporting and recordkeeping requirements in existing regulations would: (1) Effectively defeat the congressional intent to subject recordkeeping requirements to the clearance process, see S. Rep. No. 96-930, at 13; (2) make it difficult or impossible for OMB to achieve its statutory mandate of reducing "the then existing burden of Federal collections of information" by 25% by October 1, 1983; and (3) expose the agencies to the significant risk that courts will hold reporting and recordkeeping requirements in existing regulations unenforceable under Section 3512 of the Act, if they are not cleared by OMB and assigned a control number. The risk is particularly clear because the literal language of Section 3512 includes requirements to "maintain . . . information"—requirements that are never imposed by forms, and are usually imposed by means of regulations.

The Office of Legal Counsel memorandum makes clear that "OMB does have the authority under section 3504(b)(2) to initiate and review proposals for changes in regulations and to develop some orderly process for such an examination. OMB simply may not employ with respect to existing regulations the procedures, including the disapproval mechanisms, contained in sections 3504(h) or 3507." Therefore, pursuant to his authority under Sections 3504(b) and 3516, the Director has determined that reporting and recordkeeping requirements in existing regulations must be periodically submitted to OMB for review and

assignment of control numbers, in accordance with the procedures outlined in § 1320.14. The procedures adopted by the Director are described more fully in Section 8 of this preamble.

(d) Several agencies have suggested that information collection requirements contained in regulations—whether "new" or existing—need not be assigned OMB control numbers since they may not be "information collection requests" within the strict meaning of that term in the Act.

In addressing the applicability of the clearance procedures of Sections 3507 and 3504(c)(3) of the Act to reporting and recordkeeping requirements in existing rules, the Office of Legal Counsel memorandum of June 22 made reference to the question whether regulations must display OMB control numbers. It found "no specific indication that Congress contemplated the assignment of control numbers to regulations." On the other hand, the memorandum did not find the assignment of control numbers to information collection requirements in conflict with the Act, its history, or other law. The memorandum did not address whether the Director could, in exercise of his policymaking and regulatory authorities under the Act, require that agencies display a valid OMB control number on information collection requirements in agency regulations.

As the Office of Legal Counsel memorandum stated, "The Paperwork Reduction Act is a broad charter for OMB to manage, coordinate and improve federal information practices limited, of course, by existing agency authority over the substantive content of policies and programs." Specifically, the Act vests the Director with the authority to "develop and implement Federal information policies, principles, standards, and guidelines and [to] provide direction and oversee the review and approval of information collection requests, . . . [and] the reduction of the paperwork burden." 44 U.S.C. 3504(a). The authority under Section 3504 must be "exercised consistent with applicable law." *Ibid.* The Director's information policy functions also include "developing and implementing uniform and consistent information resources management policies and overseeing the development of information management principles, standards, and guidelines and promoting their use," 44 U.S.C. 3504(b)(1); "initiating and reviewing proposals for changes in . . . agency procedures to improve information practices," 44 U.S.C. 3504(b)(2); and "evaluating agency information management

practices to determine their adequacy and efficiency, and to determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director." 44 U.S.C. 3504(b)(5). Finally, the Director is granted broad regulatory authority by Section 3516: "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter."

The obligation of the agencies to comply with the Director's decisions under these authorities is expressly set out in the Act. Section 3518(a) states: "Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information activities is subject to the authority conferred on the Director by this Chapter." Moreover, Section 3506(a) provides that "[e]ach agency shall be responsible for . . . complying with the information policies, principles, standards, and guidelines prescribed by the Director." Pursuant to these authorities, the Director has concluded that all collections of information, including those mandated by regulations, must display a currently valid OMB control number. The following reasons support his conclusion that the control number requirement is a sound Federal information policy:

Frist, application of the control number requirement to all Federal collections of information is consistent with the congressional intent:

"The Director's responsibility to insure *all collections of information* display a control number corresponds to the requirement of Section 3507(f) which states an agency shall not engage in a *collection of information* without obtaining a control number from the Director." S. Rep. No. 96-930, at 42 (emphasis added).

Second, experience has shown that assignment of control numbers to reporting and recordkeeping regulations contained in regulations is workable, useful, and easily administered. Dozens of agencies, including the Commodities Futures Trading Commission, the Department of Agriculture, the Department of the Treasury (Bureau of Alcohol, Tobacco, and Firearms) the Environmental Protection Agency, the Nuclear Regulatory Commission, the Securities and Exchange Commission, the Federal Communications Commission, the Equal Employment Opportunity Commission, the Pension Benefit Guaranty Corporation, the Department of Labor, the Department of Health and Human Services, the Federal Maritime Commission, the National Credit Union Administration, the

Department of the Interior, and many others, have routinely submitted reporting and recordkeeping requirements in regulations to OMB for review and assignment of control numbers. It would be disruptive to alter this established and smoothly-functioning administrative practice.

Third, the control number is an important mechanism for inventorying the paperwork burden, monitoring agency efforts to reduce to burden, coordinating the clearance process with the Information Collection Budget, and keeping track of individual requirements for purpose of periodic review.

Fourth, the presence of control numbers will alert the public to the application of the Act to paperwork requirements in regulations, and will make OMB accountable to the public for burden reduction activities. As the Senate Report notes, control numbers enable the public to play a "policing role in monitoring agency compliance with the legislation." S. Rep. No. 96-930, at 17. Public comment and participation is a key means of identifying ways to reduce unnecessary paperwork burdens.

Fifth, adherence by the agencies to the control number requirement will eliminate the risk that courts will find reporting and recordkeeping requirements not bearing control numbers unenforceable under Section 3512 of the Act. Although the Office of Legal Counsel memorandum concludes, in effect, that OMB control numbers are not explicitly required by the Act of its own force, this opinion is not binding on the courts. Agency compliance with the requirement will reduce the risk of judicial disruption of regulatory schemes that depend upon the collection of information by means of regulation.

(e) Exclusions from the coverage of the Act are found in §§ 1320.3, 1320.7(b), and 1320.7(g). These provisions implement statutory exclusions, and address particular questions concerning the definition of "information" that have frequently arisen in the past. In any borderline case, the agency should consult with OMB concerning whether the particular item is covered within the definitions of the Act.

2. *Section 1320.5: Public Protection Provision.* Congress intended the Act to protect the public from having to comply with collections of information not approved by OMB. See S. Rep. No. 96-930, at 52. Section 3512 of the Act provides this public protection, stating: "Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and

does not display a current OMB control number assigned by the Director, or fails to state that such request is not subject to this chapter." The control number serves as an integral part of the Act's protections and provides the public with an easy method for identifying what Congress described as "bootleg" requirements. By its terms, the public protection clause applies to requirements both to "maintain" and to "provide" information, *i.e.*, to both recordkeeping and reporting requirements.

Section 1320.5 implements Section 3512 of the Act. Four points in particular should be noted about this Section:

(a) The Section does not apply to collections of information specifically exempted from the coverage of the Act under §§ 1320.3, 1320.7(b), or 1320.7(g).

(b) The proposed rule addresses the practical significance of the Act's prohibition against imposing a penalty on a member of the public for failure to comply with an information collection request that does not display an OMB control number. The term "penalty" is defined in § 1320.7(k) adds "the imposition by an agency or court of a fine or other punishment; judgment for monetary damages or equitable relief; or revocation, suspension, reduction, or denial of a license, privilege, right, or benefit." This definition makes clear that the public is entitled to disregard any collection of information request that does not display an OMB control number, without fear of adverse administrative or judicial consequences due to failure to comply with the request.

Several agencies have suggested that the reference in § 1320.7(k) to "courts" should be eliminated, apparently on the ground that courts are free to impose penalties on persons for failure to comply with uncleared collections of information. OMB considers this an inaccurate reading of the Act. Section 3512 of the Act states that "Notwithstanding any other provision of law, no person shall be subject to any penalty" for failure to comply with an agency's information collection request that does not display an OMB control number. The legislative history makes clear that the public may "ignore" any such request. S. Rep. No. 96-930, at 52. Obviously, if the agency request could be enforced through court proceeding, the public protection clause would be vitiated.

(c) In the case of information collection requests imposed as a condition to receipt of a benefit or avoidance of a penalty, § 1320.5(b) makes clear that respondents must be

permitted to satisfy in any other reasonable manner any condition that the agency purports to impose by means of an invalid information collection request. Where the information collection request had been disapproved by OMB as unnecessary, the respondent will be deemed to have satisfied the condition. Where OMB had ordered modifications in the information collection request, the respondent will be deemed to have satisfied the condition upon satisfactory compliance with the modified requirement.

This does not mean that the public automatically becomes entitled to any particular benefit, or is freed from any possibility of a penalty, simply because at some point an unapproved collection of information request was involved. There may be additional conditions other than that imposed by the "bootleg" paperwork requirement, or additional conditions imposed directly by statute. These conditions remain effective, and the respondent may be penalized or denied a benefit for failure to satisfy them. The penalty in such instance, however, would not be imposed for failure to comply a "bootleg" requirement, but for failure to comply with other conditions.

(d) As explained above, the Director has extended the control number requirement to collection of information requirements in regulations. Whether failure of an agency to display a control number on an information collection requirement contained in a regulation would make such requirement unenforceable must ultimately be determined by the courts.

**3. Section 1320.6: General Information Collection Guidelines.** Section 1320.6 summarizes several policy guidelines that OMB will follow in determining whether to approve or disapprove information collection requests. The guidelines are not intended to restrict either OMB's or the agency's ultimate discretionary authority in a particular case. Rather, their purpose is to inform the agencies and the public of OMB's general policies in advance of an particular submission so that the review process can be facilitated.

Several agencies have suggested deletion of some or all of the guidelines, pointing out instances in which enforcement of the guidelines would be inappropriate or contrary to law. OMB is well aware that the guidelines cannot and should not be strictly enforced on a blanket basis. The guidelines merely represent OMB's judgment that in most circumstances, agencies are not justified in imposing certain kinds of paperwork requirements. They will be relaxed if it is necessary to do so either to satisfy

statutory requirements or to meet other reasonable needs.

The guidelines address frequency of reporting, deadlines for compliance with information collection requests, numbers of copies, federal grantee reporting, remuneration of respondents, duration of record retention requirements, generalizability of statistical surveys, and separate requirements for small businesses and other small entities. OMB would welcome suggestions from the public on additional guidelines that should be included in this Section.

**4. Section 1320.7: Definitions.** (a) The statutory definition of the term "burden" is: "the time, effort, or financial resources expended by persons to provide information to a Federal agency." 44 U.S.C. 3502(3). This definition has been amplified in § 1320.7(a) of this Circular in two respects. First, the definition in § 1320.7(a) comprises all burden required "to respond to an information collection request." This makes clear that the concept of "burden" applies to recordkeeping or other information collection requirements under which no information is "provided to" a Federal agency. This is consistent with the Act's deliberate inclusion of "recordkeeping requirements" within the OMB clearance process, see S. Rep. No. 96-930, at 13. This modified definition of "burden" is necessary to enable OMB and the agencies to conduct the statutory "necessity" determination under 44 U.S.C. 3504(c) and 3508.

Second, the burden of federal collections of information is far greater than the mere time required to fill out a particular federal form. The full burden includes the time necessary to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment necessary to comply with the information collection request; to conduct tests, inspections, polls, observations or the like necessary to obtain the information; to organize the information into the requested format; and to maintain, disclose, or report the information. In order to ensure that the full federal paperwork burden is considered under the Act, § 1320.7(a) has made clear that all of these aspects of paperwork burden are taken into account. Attention is directed in particular to the inclusion of testing and inspection aspects of collections of information under the Act. Any requirement that a person conduct tests, observations, polls, or other procedures for the gathering of information, in connection with a federal reporting or recordkeeping requirement, is subject to

review and burden reduction under the Act.

This proposed rule has not attempted to provide agencies with details about the methodology of burden estimation. Such information is provided by OMB in other communications with the agencies. Several agencies have expressed concern that considering both "time and effort" and "financial resources" in computing burden might lead to double-counting of personnel costs. The specific guidance provided by OMB will be designed to avoid any such problem.

(b) In defining the operative term "collection of information," this proposed rule has attempted to implement the congressional intent to cover the entirety of the federal paperwork burden, regardless of the particular form or mechanism by which it is imposed. As the Senate Report states: "The imposition of a federal paperwork burden does not depend on how the questions are asked of the respondent, but rather on the fact the federal government has asked or sponsored the asking of questions." S. Rep. No. 96-930, at 39.

For example, public disclosure requirements—requirements for a person to provide information to another person or to the public at large—generally constitute a form of "collection of information" subject to review and burden reduction under the Act. See § 1320.7(b). This coverage follows from the very nature of a public disclosure requirement, since such requirements entail the obtaining or compiling of information by a member of the public, its maintenance for the purpose of preparation into a format acceptable to the federal government, and, finally, its disclosure to the public. In the relevant respects of burden, cost, and practical utility, a requirement of compilation and retention of information, coupled with a requirement of public disclosure, is indistinguishable from other reporting and recordkeeping requirements. The Act's coverage of federal requirements to "maintain" information could not logically be confined to situations in which the information is maintained privately, and not to situations in which it is maintained for general public use.

These general considerations are buttressed by the legislative history of the Paperwork Reduction Act, which notes, "information is also collected to form the basis for disclosure to the public." S. Rep. No. 96-930, at 39. The Senate Report states that because "Federally-mandated disclosures to the public . . . are central to carrying out the purposes of . . . federal . . . laws," OMB's "practical utility"



determination should take into account whether information is made "available to the public for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction." *Id.*, at 39-40. These statements in the legislative history confirm that Congress intended "Federally-mandated disclosures to the public" to be subject to OMB review under the statutory tests of "burden" and "practical utility."

In OMB's view, coverage of public disclosure requirements will result in significant reductions in the federal paperwork burden, because many disclosure requirements can be simplified, made less frequent or extensive, or shortened, without detracting significantly from their usefulness to the public.

For similar reasons, certain labelling requirements are subject to OMB review and burden reduction. Section 1320.7(b) makes clear that a "labelling requirement" is also a form of "collection of information" within the meaning of the Act. It is important to note that this does not encompass statements or other information supplied by the federal agency, which is required to be transmitted on a label. It encompasses only requirements that a person obtain or compile information, maintain it for a period (however brief), and disclose it to the public by means of a label.

Another form of "recordkeeping requirement" specifically listed in the definition of "collecting of information" in § 1320.7(b) is: "audit guide[s] calling for the collection of information through means other than the review of records compiled and maintained under an approved recordkeeping requirement." So long as audit guides instruct the auditors to examine records that are otherwise required to be compiled or maintained under an OMB-approved recordkeeping requirement, they are not considered to be separate "recordkeeping requirements."

However, to the extent that audit guides instruct auditors to examine records not otherwise required to be kept under an approved recordkeeping requirement, they will be considered to be "collections of information."

Several agencies have questioned inclusion of contracts, agreements, audit guides, procurement requirements, interview guides, plans, or policy statements in the definition of "collection of information." Obviously, not all contracts, agreements, policy statements, or the like call for the collection of information. However, this list is provided as examples of "other similar methods" that can be used for

the collection of information. When so used, they are covered by the Act.

(c) Several agencies have requested clarification of a terminological difficulty in the Act: the distinction, if any, between the term "information collection request" and the term "information collection requirement." The former term is defined in Section 3502(11) as "a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, or other similar method calling for the collection of information." The latter term appears only in Section 3504(h), which was added to the Act by floor amendment. It is not defined in the Act or in the legislative history. In context, however, the statute employs the term "information collection requirement" exclusively in reference to collections of information by means of an agency rule adopted after public notice and comment. This Circular maintains that distinction, reserving the term "information collection requirement" for use in connection with paperwork burdens imposed by regulations adopted after public notice and comment, and using the term "information collection request" in other contexts. In substance the terms are identical. The relation between the terms, as well as between them and the general term "collection of information," is made clear in the definitions in § 1320.7.

It is important to note that an information collection requirement is "specifically contained in" an agency rule only if the full specifications for the requirement are contained in the rule. For example, a reporting requirement authorized by a rule, but implemented by means of a form, is *not* considered to be an "information collection requirement contained in a rule." Rather, it is considered an "information collection request."

(d) Sections 3504(c) and 3508 of the Act provide that before clearing an information collection request or carrying out other paperwork control functions, OMB must determine whether the collection is "necessary for the proper performance of the functions of the agency, including whether the information will have practical utility." 44 U.S.C. 3508. This concept of "practical utility" is central to OMB's review function. Section 1320.7(m), which defines practical utility, incorporates the major components of the practical utility determination as set out in the legislative history:

"The term 'practical utility' means the ability of an agency to *actually use* as opposed to *potentially use* the information it collects. An agency may determine it needs

information it does not have the capability to use for the purpose intended. Such information would not have practical utility.

In the case of general purpose statistics, which are those collected chiefly for public and general government uses and without primary reference to policy or program operations of the agency collecting the information, 'practical utility' means that actual uses can be determined.

"Information is also collected to form the basis for disclosure to the public . . . . Therefore, in considering whether information will have practical utility, the Director should consider, among other things, whether the agency can use the information either to carry out its regulatory or other functions or to make it available to the public for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction." S. Rep. No. 98-930, at 39-40 (emphasis added).

(e) The term "collection of information" under the Act applies only when an information collection request is posed to ten or more persons. Section 1320.7(q) clarifies that "ten or more persons" refers to the persons to whom an information collection request is addressed by the agency, and to any independent entities to which the initial addressee may reasonably be expected to transmit the request. This includes independent state or local entities and separately incorporated subsidiaries and affiliates, but does not include employees of the respondent within the scope of their employment or contractors engaged for the purpose of complying with the information collection request. The period for calculating the number of addressees has been set at one year.

The definition in § 1320.7(q) establishes two general presumptions: (1) That any reporting or recordkeeping requirement contained in a rule of general applicability is addressed to ten or more persons; and (2) that any information collection request submitted to all or a substantial majority of an industry, as defined by the Standard Industrial Classification Manual, is addressed to ten or more persons. Several agencies have suggested that these should be made rebuttable presumptions. OMB is of the view that attempting to determine the number of persons affected by a generally applicable rule or industry-wide requirement would be pointless, and unconnected to the purposes of the Act. The limitation to "ten or more persons" is intended to exempt *de minimus* paperwork requirements. OMB does not believe that the rule, as drafted, will prove inconsistent with that intent. The public's views on this issue are specifically invited.

Attention is directed to the relationship between the definition of "ten or more persons" in § 1320.7(q) and the definition of "information" in § 1320.7(g). The latter makes clear that the term "information" does not include particularized facts or opinions the request for which is conducted by means other than identical questions posed to each respondent. Not every question posed by a government official to an individual is covered by the Act. The intention of the Act is to cover generalized solicitations of information, not particularized requests to particular individuals. No information collection request imposed upon fewer than ten persons is covered by the Act, and only those information collection requests submitted to fewer than ten persons that are general and not particularized in nature must display a statement that they are not subject to the requirements of the Act. The sole reason for requiring the statement is to eliminate confusion and maintain the integrity of the control number requirement. In determining what categories of information collection request must include such a statement, the agency should consult with OMB.

(f) Other definitions of terms not defined in the Act, or for which amplified definitions were needed, are also provided in § 1320.7, including "display," "information," interagency reporting requirement," "reporting requirement," and "sponsor." These definitions are largely self-explanatory.

5. *Section 1320.8: Agency Head and Senior Official Responsibilities.* Section 3508 of the Act requires that each agency appoint a Senior Official to oversee the information management functions of the agency, including compliance with the paperwork control provisions of the Act. Section 1320.8 implements this requirement. OMB has determined that the organizational structure of the Senior Official's office, and the role of the Senior Official within the agency (other than the statutory requirement that the Senior Official "report directly to [the] agency head") should be left to the individual judgment of each agency.

Section 1320.8 also makes clear that Section 3508 of the Act must be accommodated to other laws concerning intra-agency structures, by providing that an agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head.

6. *Section 1320.9: Delegation of Authority.* Section 1320.9 implements the provisions of Section 3507(e) of the Act,

permitting delegation of paperwork clearance functions to the agency Senior Official.

OMB believes that delegation under this Section should, in general, await further implementation of the Information Collection Budget process. Until the full paperwork burden of each agency is inventoried and the reduction process is well underway, OMB believes that it should continue its direct exercise of paperwork reduction authority. OMB does, however, intend to pursue greater delegation of paperwork clearance functions at the appropriate time.

7. *Section 1320.10: Information Collection Budget.* Under the Paperwork Reduction Act, OMB has a statutory responsibility to ensure that all information collection requests are inventoried and to set goals for reduction of the burden of federal information collection requests. 44 U.S.C. 3504(c)(3). OMB must also coordinate agency information practices through the review of budget proposals, 44 U.S.C. 3504(b)(3), evaluate progress toward its statutory goals of paperwork burden reduction, 44 U.S.C. 3505(1), and report to Congress on estimated burdens of collection of information by agency and by categories within agencies. 44 U.S.C. 3514(a)(3). The Information Collection Budget is a management tool to enable OMB to carry out these statutory responsibilities. It also serves to facilitate each agency's examination of its aggregate and comparative paperwork burdens upon the public. Searching and comparative scrutiny of paperwork requirements is a necessary element in any program to reduce the existing paperwork burden and thereby achieve the statutory goals of burden reduction.

The Information Collection Budget procedures outlined in § 1320.10 make no change from current practice. In order to retain flexibility and to enable OMB to make modifications in its budget specifications, OMB has not attempted to provide such specifications in this proposed rule. Questions of burden estimation methodology, format, timing, and process are addressed in other communications between OMB and the agencies.

8. *Procedures for Seeking Approval of Information Collections.* Sections 1320.11-1320.15 set out the general procedures for OMB review and approval of agency collections of information.

(a) Section 1320.11 sets forth general requirements for submission of agency collections of information to OMB for review. These procedures apply to collection of information requirements in agency rules, both existing and

proposed, as well as to information collection requests.

Paragraph (a) states that the submissions must be made by the agency head or Senior Official, or their designee, in accordance with instructions that may be prescribed by OMB. In the past, such instructions have been provided by various means, including Standard Form 83. Specific instructions as to the format of submissions are provided separately so that they can be kept flexible, and modified as circumstances require.

Paragraph (b) sets forth the statutory criteria for OMB's evaluation of collections of information. These criteria are found in Sections 3504(c) and 3508 of the Act, and are further explained in the legislative history. See S. Rep. No. 96-930, at 49. See also the discussion of the defined term "practical utility" above. Several agencies have requested clarification of the role of statutory requirements within the "practical utility" analysis. Some agencies have suggested that collections of information specifically required by statute should not undergo the clearance process. Section 1320.11(b) has been modified to make clear that "OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation." OMB believes that the clearance of statutorily-mandated collections of information under this standard is consistent with congressional intent. The Senate Report states, "the fact the collection of information is specifically required by statute does not, however, relieve an agency of the obligation to submit the proposed collection for the Director's review." S. Rep. No. 96-930, at 49.

Paragraph (d) of § 1320.11 establishes the procedure for reconsideration of OMB's approval of a collection of information prior to the expiration date of the control number. This procedure is analogous to an agency reconsideration proceeding and is necessary when circumstances have significantly changed or when the agency's original estimate of the burden of the collection of information turns out to have been significantly understated. In such cases, waiting to review the collection of information until the expiration of the control number would be contrary to the statutory goal of continuing paperwork oversight and burden reduction. For "good cause," OMB will stay the effectiveness of its approval of information collection requests, pending

completion of the review. "Good cause" in this context exists when continued collection of information would be significantly contrary to the standards of the Act. OMB will take into consideration any disruption such reconsideration would create in the agency's program. OMB will not use the authority of paragraph (d) to review an information collection request previously approved by exercise of an independent agency's override authority under § 1320.17.

Several agencies have questioned the authority of OMB to reconsider approval of collections of information in advance of the expiration date. This authority derives, in part, from OMB's authority to determine the duration of approval, up to a three year maximum. OMB is not obligated to set a fixed and unchanging date for expiration of approval. Rather, as a result of this rule and OMB practice, all expiration dates are expressly conditioned upon OMB's right to reconsider at a later date. Such reconsiderations are not common, but have occurred as the occasion has arisen. This has been the established practice both under the Act and under its predecessor, the Federal Reports Act. Nothing in the language or legislative history of the Paperwork Reduction Act indicates that Congress intended to cut back on OMB's well-established authority under the Federal Reports Act to reconsider approvals of collections of information in advance of the expiration date.

The remaining paragraphs of § 1320.11 address the relationship of Paperwork Act clearance to education-related clearances under the General Education Provisions Act, modifications in collections of information after OMB approval, reconsideration of disapprovals, and timing of submissions. As a result of agency suggestions, the prohibition in paragraph (f) of modifications in approved information collection requirements and requests has been limited to "substantive or material modification[s]."

Several agencies have requested regulatory guidance on waivers and generic grants of approval for collections of information. OMB practice in appropriate cases has been to grant waivers from further review to classes of information collection not susceptible to individual clearance judgments or burden reduction under the statutory standards, or to grant generic approvals for certain collections of information. For example, OMB might review and approve a set of standard data requests of an agency for use in a wide variety of circumstances, as in procurement

contracts, rather than review each individual request made of respondents. OMB has considered it unnecessary specifically to address these situations in this proposed rule, but will continue its practice on a flexible, case-by-case basis.

(b) For information collection requests, the clearance procedures are those prescribed by Section 3507 of the Act, as clarified by § 1320.12. These procedures are designed to ensure that the submission contain sufficient information to justify the information collection request (see § 1320.12(a)); that the public have notice of and opportunity to comment on a proposed information collection request (see § 1320.12(b), (e)); that OMB make its decision promptly (see § 1320.12(c), (d)); and that all approved information collection requests contain a valid OMB control number (see § 1320.12(f)).

The question of the timing of submissions to OMB in relation to Federal Register notices presents the potentially conflicting considerations of conformance to the usual Federal Register publishing schedule of the agencies, on the one hand, and ensuring public notification of the submission in time for comments to be prepared and analyzed, on the other. Section 1320.12(b) makes an accommodation between these considerations, by requiring that the agency forward its notice to the Federal Register on or before the day of submission to OMB. This should enable agencies to follow their usual schedules for Federal Register publication without seriously truncating the public participation period.

(c) For information collection requests specifically contained in proposed rules, Section 3504(h) of the Act establishes procedures designed to accommodate OMB's review with notice and comment procedures under the Administrative Procedure Act (5 U.S.C. Chapter 5). Section 1320.13 describes these procedures and the circumstances under which OMB can disapprove an information collection request specifically contained in a proposed rule.

Section 3504(h) of the Act was crafted as a specific limitation on OMB's broad authority to review information collection requests under Section 3507. See Daily Congressional Record S14689 (Nov. 19, 1980) (Sen. Kennedy). As with Section 3504(h), § 1320.13 of the Circular applies only to information collection requirements specifically contained in proposed regulations undergoing notice and comment rulemaking proceedings. An information collection request that is

consistent with, but not specifically contained in, a regulation is subject to OMB Review under the procedures of § 1320.12, as are information collection requirements contained in new regulations not promulgated pursuant to notice and comment rulemaking.

The primary limitations on OMB's review authority contained in Section 3504(h) are: (1) OMB must comment on an information collection request contained in a proposed rule within 60 days of its publication or forfeit its right to disapprove the request; and (2) if OMB does file comments and the agency responds to those comments, OMB can disapprove the request only if the agency's response was "unreasonable." The grounds for OMB disapproval are set out in § 1320.13(e).

Several agencies have stated that OMB does not have the authority to "approve" an information collection requirement under Section 3504(h). This position, however, is contradicted by the language of Section 3504(h)(9), which refers to "the Director's decision to approve or not to act upon a collection of information requirement contained in an agency rule" (emphasis added).

As discussed above, the Director has determined, as an exercise of his regulatory authority, to require that information collection requirements contained in regulations must display an OMB control number, and that the control number can be valid for no longer than three years at a time. As a matter of policy, OMB has determined that information collection requirements contained in regulations adopted under § 1320.13, if approved, should generally be given a control number for the full three years. This policy is designed to meet the Act's objectives of accommodating paperwork review with the regulatory process. Of course, as with other collections of information under § 1320.11(d), OMB may review an information collection requirement contained in a regulation prior to the expiration of the three-year period if such earlier review is warranted. OMB will not, however, exercise this authority in the case of information collection requirements that have been approved after the exercise of an independent agency override. Nor will OMB stay the effectiveness of an information collection requirement contained in an agency rule adopted after public notice and comment, pending review.

(d) Section 1320.14 establishes an orderly procedure for the review and initiation of proposals for changes in information collection requirements in existing regulations that were adopted



after public notice and comment. The legal basis for, and nature of, these procedures is set forth in the discussion of coverage issues above.

Initially, information collection requirements in existing rules that have not been reviewed by OMB or the General Accounting Offices and are not assigned currently valid control numbers, must be submitted to OMB for review prior to the effective date of this rule applicable to such requirements, July 1, 1983. OMB will consult with the agencies concerning an orderly schedule for such submissions and review. Thereafter, agencies will periodically, at intervals no longer than three years, submit all reporting and recordkeeping requirements in existing regulations to OMB for review. If OMB approves the requirements without modification, or fails to act upon the submission within 90 days, it will assign an OMB control number, which the agency will display by publication in the *Federal Register*. (Section 1320.7(d) explains the method for "display" of control numbers on information collection requirements in regulations.) No further action by OMB or the agency is required.

If, however, OMB determines that the collection of information by means of such reporting or recordkeeping requirements is unnecessary for the proper performance of the functions of the agency under the standards established for OMB's "other paperwork control functions" under Section 3504(c) of the Act, OMB will, under Section 3504(b), "initiate proposals for changes in the regulations." In such instances, OMB will direct the agency to initiate a rulemaking proceeding to investigate the advisability of modifying or rescinding the requirements. The procedures of Section 3504(h) of the Act, as outlined in § 1320.13, will apply to any such rulemaking.

A decision by OMB to require a rulemaking will not constitute a "disapproval" of the information collection requirement involved, and the agency may continue to collect the information pending completion of the rulemaking proceeding. In order to permit rulemaking procedures under the Administrative Procedure Act or other applicable law to take place, OMB will, upon deciding to initiate proposals for change in an information collection requirement in an existing agency rule, extend the control number assigned to such requirement until a final decision is reached. Thus, in no event may compliance with the Paperwork Reduction Act be a justification for noncompliance with the Administrative

Procedure Act or other applicable procedural law.

(e) Section 1320.15 has been added to this proposed rule to provide guidance to the agencies concerning the common situation in which one agency prescribes a collection of information format to be followed by another agency or agencies. Section 1320.15 is designed to ensure that the OMB clearance process is principally undertaken by the prescribing agency, i.e., the agency with the authority to make modifications in the collection, but that the burden hours involved are attributed to the agency actually using the information. If an agency is required by law to collect certain information, it is considered to "use" it, even if the information has no practical utility outside of compliance with the law.

**9. Section 1320.16: Interagency Reporting.** A number of agencies requested clarification of the procedure for clearance of interagency reporting requirements. Section 1320.16 requires the General Services Administration to issue regulations or requirements concerning covered interagency reporting. This Section is the successor to Attachment B of the present Circular A-40.

**10. Section 1320.17: Emergency Processing.** In some instances, the ordinary 60-day period for OMB review of proposed information collection requests must be replaced with a more expeditious procedure. Section 3507(g) of the Paperwork Reduction Act requires that OMB use an emergency processing procedure for the clearance of an agency's proposed information collection request if the agency head determines that the collection of information is needed prior to the expiration of the 60-day period for review and is essential to the mission of the agency, and that the agency cannot reasonably comply with the provisions of the Act within the 60-day period because public harm would result if normal clearance procedures were followed, or because an unanticipated event has occurred and the use of normal clearance procedures would prevent or disrupt the collection of information related to the event or would cause a statutory decline to be missed. Section 1320.17 implements this Section of the act.

Several agencies have urged that emergency approvals under this Section be for longer than the 90-day period. This would not be consistent with the Act. See 44 U.S.C. 3507(g).

**11. Section 1320.18: Public Access.** Vigorous public participation in decisionmaking under the Paperwork

Reduction Act is invited and encouraged. Prior to OMB review of any information collection request or requirement, the agency must publish a notice of such review in the *Federal Register*. Sections 1320.12(b), 1320.13(a), 1320.14(c). Several agencies have suggested that OMB, rather than the agency, should publish such notices in the *Federal Register*. The director has concluded that it is important for purposes of meaningful public notification for all notices regarding an agency's paperwork requirements to be published by that agency, in that agency's section of the *Federal Register*. The public is accustomed to consulting the *Federal Register* section for all notices pertaining to a particular agency; it would be inconvenient to the public for notices about an agency's paperwork requirements to be located in the OMB section of the *Federal Register*.

Section 1320.18 provides that the public may obtain further information regarding proposed collections of information, and inspect OMB docket files. An exception to these requirements is permitted only when public participation in the approval process would defeat the purpose of the collection of information, violate state or federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The public is invited to comment on proposed collections of information, and OMB will consider any such comments before approving or disapproving a collection. See 44 U.S.C. 3508. In the case of information collection requirements contained in regulations proposed for notice and comment rulemaking, the public is entitled to participate in the public comment proceedings.

The public is also encouraged to participate in the decision to propose an information collection requirement on an emergency basis under § 1320.17, or to delegate OMB approval authority to a Senior Official under § 1320.9.

Potentially the most important form of public participation in the reduction of the federal paperwork burden is to take advantage of the public protection features of § 1320.5 of the Circular. By virtue of these protections, the public is the principal enforcer of the Act; by resisting uncleared information collection requests, the public can bring to the attention of OMB and the agencies collections of information that have not been subjected to the process of review and burden reduction. As the Senate Report stated:

"Public participation should also play a policing role in monitoring agency

compliance with the legislation. Section 3512, entitled "Public Protection" states that any collection of information which does not display a control number can be ignored by the respondent without penalty for failure to comply." S. Rep. No. 98-930, at 17.

**12. Section 1320.20: Other Authority.** The act vests the Director with broad authority to develop and implement federal information policies and standards. Section 1320.20 implements the Director's authority to determine whether matters fall within the scope of the Act or this rule, to conduct rulemaking proceedings to determine whether an agency's collection of information is consistent with statutory standards, and to waive provisions of this rule to the extent permitted by law. Paragraph (c), like Section 3506(a) of the Act, provides that "[e]ach agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by the Director."

**13. General.** In other respects, OMB has determined that the Paperwork Reduction Act is self-explanatory, and that further regulatory guidance is unnecessary at this time. Matters falling outside the specifications of this rule remain subject to the requirements of the Act.

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#### List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, Paperwork Collections of information.

For the reasons set forth in the preamble, OMB proposes to amend 5 CFR Chapter III by adding a new Part 1320 to read as follows:

### PART 1320—CONTROLLING PAPERWORK BURDENS OF THE PUBLIC

Sec.

- 1320.1 Purpose.
- 1320.2 Effect.
- 1320.3 Coverage.
- 1320.4 General requirements.
- 1320.5 Public protection.
- 1320.6 General information collection guidelines.
- 1320.7 Definitions.
- 1320.8 Agency head and senior official responsibilities.
- 1320.9 Delegation of approval authority.
- 1320.10 Information collection budget.
- 1320.11 Agency submissions of information collections.
- 1320.12 Clearance of information collection requests.
- 1320.13 Clearance of information collection requirements in proposed rules.

Sec.

- 1320.14 Information collection requirements in existing regulations.
  - 1320.15 Collections of information prescribed by another agency.
  - 1320.16 Interagency reporting.
  - 1320.17 Emergency processing.
  - 1320.18 Public access.
  - 1320.19 Independent regulatory agency override authority.
  - 1320.20 Other authority.
- Authority: 31 U.S.C. Sec. 18a and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

#### § 1320.1 Purpose

The purpose of this Part is to implement the provisions of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) (the Act) concerning collections of information. It is issued under the authority of Section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." It is designed to minimize and control burdens associated with the collection of information by Federal agencies from individuals, businesses and other private institutions, and state and local governments. In the case of inter-agency reporting, this Part establishes policy and promulgates regulations to insure the effective management of inter-agency reporting requirements in the executive branch, and is promulgated under the authority of the Federal Records Act (Title 44 U.S.C. Chapters 21, 25, 27, 29, 31) and Section 104 of the Budget and Accounting Procedures Act of 1950, (Title 31 U.S.C. Section 18a), as well as the Act.

#### § 1320.2 Effect.

This Part supersedes and rescinds Circular No. A40, Revised, dated May 3, 1973, and Transmittal Memorandum No. 1, dated February 10, 1976. This part become effective upon publication of the final rule in the Federal Register, except that provisions relating to information collection requirements in existing agency regulations that have not previously been reviewed by OMB or the General Accounting Office, and are not assigned currently valid control numbers, will become effective on July 1, 1983.

#### § 1320.3 Coverage.

The requirements of this Part apply to all agencies as defined in 44 U.S.C. 3502(1) and to all collections of information sponsored by those agencies, as defined in § 1320.7(b), except for collections of information:

(a) By compulsory process pursuant to the Anti-trust Civil Process Act or Section 13 of the Federal Trade Commission Improvements Act or

Section 13 of the Federal Trade Commission Improvements Act of 1980:

(b) During the conduct of intelligence activities, as defined in Section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, including Executive Order 12333, issued December 4, 1981, or during the conduct of cryptologic activities that are communications securities activities.

(c) During the conduct of a federal criminal investigation or prosecution, during the disposition of a particular criminal matter, during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. This exception applies during the entire course of the investigation or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after the investigation or action is sufficiently identified that potential respondents could be aware that the exception applies. General collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an entire industry, do not fall within this exception.

#### § 1320.4 General requirements.

(a) An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and, if the collection of information is non-voluntary, displaying a currently valid OMB control number. In the case of a collection of information to which this control number requirement would otherwise apply but which is imposed on nine or fewer persons, the information collection request or requirement shall state that for this reason it is not subject to the Act.

(b) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:

(1) The collection of information is the least burdensome necessary to comply with legal requirements and achieve program objectives;

(2) The collection of information is not duplicative of information otherwise accessible to the agency; and

(3) The collection of information has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting

disproportionate costs or burdens onto the public. It shall also comply with the general information collection guidelines set in § 1320.6, where applicable.

(c) Except as provided in § 1320.17, to the extent that OMB determines that all or any portion of a collection of information by an agency is unnecessary, the agency shall not engage in such collection or portion thereof.

#### § 1320.5 Public protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any information collection request subject to the requirements of this Part, if the request does not display a currently valid OMB control number, or, in the case of collections of information to which this requirement would otherwise apply but which are submitted to nine or fewer persons, the request fails to state that for this reason it is not subject to the Act.

(b) Whenever an agency has imposed an information collection request as a condition (as a burden of proof or otherwise) to the receipt of a benefit or the avoidance of a penalty, and the information collection request does not display a currently valid OMB control number or statement, as prescribed in § 1320.4(a), the respondent shall be permitted to satisfy the condition in any other reasonable manner. In the case of an information collection request disapproved by OMB as unnecessary, the respondent shall be deemed to have satisfied the condition. In the case of an information collection request ordered modified by OMB, compliance with the request, as so modified, shall constitute satisfaction of the condition.

#### § 1320.6 General information collection guidelines.

Unless it is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other reasonable need no agency may sponsor a collection of information:

(a) Requiring respondents to report information to the agency more often than quarterly;

(b) Requiring respondents to prepare a written response to an information collection request or requirement in fewer than 21 days after receipt of it;

(c) Requiring respondents to submit more than an original and two copies of any document;

(d) Requiring grantees to submit or maintain information other than that required under OMB Circulars A-102 or A-110;

(e) Providing for remuneration of respondents, other than contractors or grantees;

(f) Requiring respondents to retain records, other than health and medical records, for more than four years;

(g) In connection with a statistical survey that is not designed to produce results that can be generalized to the universe of study;

(h) Unless it has taken all practicable steps to develop separate and simplified requirements for small businesses and other small entities.

#### § 1320.7 Definitions

(a) "Burden" means the total time or financial resources required to respond to a collection of information, including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize the information into the requested format; and to maintain, disclose, or report the information.

(1) The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records), will be excluded from the "burden" if the agency demonstrates that the activities are usual and customary. A collection of information sponsored by a federal agency that is also sponsored by a unit of state or local government is presumed to impose a federal burden except to the extent the agency shows that such state or local requirement would be imposed even in the absence of a federal requirement.

(b) "Collection of information" means the obtaining or soliciting of information by an agency from ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain a benefit. For purposes of this definition, the "obtaining or soliciting of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information.

(1) A "collection of information" may include the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts, agreements, requirements for a person to provide information to another person or to the public at large, policy statements, plans, rules or regulations, planning requirements, requests for proposal or other procurement requirements, record

retention requirements, interview guides, labeling requirements, telegraphic or telephonic requests, and audit guides calling for the collection of information through means other than review of records compiled and maintained under an approved recordkeeping requirement. The disclosure of information supplied by the Federal government, which is to be provided by the recipient to other persons, through labeling or other means of disclosure, is not included within this definition.

(2) A "collection of information" does not include questions posed to agencies, instrumentalities, or employees of the United States, unless the results are to be used for general statistical purposes. General purpose statistics are those collected chiefly for public and general government uses, without primary reference to policy or program operations of the agency collecting the information.

(c) "Director" means the Director of OMB.

(d) "Display" means:

(1) In the case of forms, questionnaires, instructions, and other written information collection requests individually distributed to potential respondents, to print the OMB control number (and, where OMB determines it to be appropriate, the expiration date) in the upper right hand corner of the front page of the request;

(2) In the case of information collection requirements or requests contained in regulations, guidelines, and other issuances published in the Federal Register, to publish the OMB control number in the Federal Register and ensure that it will be included in the Code of Federal Regulations if the issuance is also included therein;

(3) In other cases, and where OMB determines that special circumstances exist, to use other means to inform potential respondents of the OMB control number (and, where OMB determines it to be appropriate, the expiration date).

(e) An "Education agency or institution" means any public or private agency or institution with the primary function of education.

(f) "A Federal education program" means any federal activity with a primary purpose of offering instruction or affecting an educational agency's or institution's ability to offer instruction.

(g) "Information" means any statement of fact or opinion, whether in numerical, graphic, or narrative form, and whether maintained on paper, magnetic tapes, or other media. "Information" does not include:

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments, provided that they require no information other than that necessary to identify the respondent;

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the *Federal Register* or other publications, provided that no person is required to supply specific information pertaining to the commentor, other than that necessary for self-identification, as a condition to the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals under treatment or in control groups in connection with treatment for or prophylaxis to prevent a clinical disorder, if such information is to be used for purposes of research on or direct treatment of that disorder, or for the interpretation of biological analyses of body fluids, tissues, or other specimens, or for identification or classification of such specimens;

(6) Particularized facts or opinions the request for which is conducted by means other than identical questions posed to each respondent;

(7) Like items so designated by the Director.

(h) "Information collection request" means the method by which an agency communicates the specifications for a collection of information to potential respondents, including a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, or other similar method.

(i) "Information collection requirement" is the term used for the collection of information by means of agency rule adopted after public notice and comment, where no form or other written information collection request is used by the agency.

(j) "Interagency reporting requirement" means any collection of information that involves reports to an agency from one or more other agencies.

(k) "Penalty" means the imposition by an agency or court of a fine or other punishment; judgment for monetary damages or equitable relief; or revocation, suspension, reduction, or denial of a license, privilege, right, or benefit.

(l) "Person" means an individual, partnership, association, corporation, business trust, legal representative,

organized group of individuals, state, territory, or local government or component thereof. Current employees of the federal government are excluded from this definition for purposes of the collection of information within the scope of their employment. Military reservists and members of the National Guard are considered Federal employees when on active duty, and for purposes of obtaining information about duty status. Retired and other former federal employees are included entirely within the definition of "person."

(m) "Practical utility" means the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency can use the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labelling requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics, "practical utility" means that actual uses can be demonstrated.

(n) "Recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records and includes requirements that information be maintained or retained by persons but not necessarily provided to an agency.

(o) "Reporting requirement" means a requirement imposed by an agency on persons to provide information to another person or to the agency. Reporting requirements may implicitly or explicitly include related recordkeeping requirements.

(p) "Sponsor." A federal agency is considered to "sponsor" the collection of information if the agency collects the information, causes another agency to collect the information, contracts with a person to collect the information, or requires a person to provide information to another person. An information collection undertaken by a recipient of a federal grant is considered to be "sponsored" by an agency only if:

(1) The recipient of a grant is collecting information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the information collection or collection procedures.

(q) "Ten or more persons" refers to the persons to whom an information

collection request is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the request during that period, including independent state or local entities and separately incorporated subsidiaries or affiliates, but not including employees of the respondent within the scope of their employment, or contractors engaged for the purpose of complying with the information collection request.

(1) Any recordkeeping or reporting requirement contained in a rule of general applicability is presumed to involve ten or more persons.

(2) Any information collection request addressed to all or a substantial majority of an industry, as defined by the Standard Industrial Classification Manual, is presumed to involve ten or more persons.

#### § 1320.8 Agency head and senior official responsibilities.

(a) Except as provided in § 1320.8(b) below, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act.

(1) The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this Part.

(2) The Senior Official shall independently assess all collections of information to insure that they meet the criteria specified in § 1320.4(b) and that the agency conducts no collection of information that does not display a currently valid OMB control number.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) Upon request of the Director, the head or the Senior Official of each agency (other than an independent regulatory agency as defined in Title 44 U.S.C. Section 3503) shall make its services, personnel, and facilities available to OMB for the performance of Paperwork Reduction Act functions, unless such head or Senior Official determines in writing that the provision of such resources is impracticable.

**§ 1320.9 Delegation of approval authority.**

(a) The Director may, after complying with notice and comment procedures of Title 5 U.S.C. Chapter 5, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he has not delegated authority.

(b) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, sponsored by an agency, at any time.

**§ 1320.10 Information collection budget.**

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be sponsored by the agency in the succeeding twelve months. If during the course of such year, the agency proposes a collection of information not included in the annual budget, it shall, in accordance with such instructions as OMB may provide, either make offsetting reductions in other items in the budget or obtain supplemental authorization for the additional collection. For good cause, and where it is possible to meet its statutory responsibilities by other means, OMB may exempt any agency from this requirement.

**§ 1320.11 Agency submission of information collection.**

(a) Agency submission of collections of information for OMB review may only be made by the agency head or Senior Official, or their designee. Submissions shall be made in accordance with such procedures and in such form as the Director may prescribe.

(b) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria listed in § 1320.4(b), and will consider whether the burden of the collection of information is justified by its practical utility. OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the

agency exercises discretion in its implementation.

(c) Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in accordance with the requirements set forth in § 1320.13. Agencies shall submit collections of information contained in existing rules in accordance with the requirements set forth in § 1320.14. Agencies shall submit all other collections of information in accordance with the requirements set forth in § 1320.12. Special rules for clearance and inventory of collections of information prescribed by an agency, but collected by another agency, are set forth in § 1320.15.

(d) Prior to the expiration date assigned to a collection of information, OMB may notify the agency involved of its decision to review the collection of information. Upon such notification, the agency shall submit the information collection request or requirement for review under the procedures outlined in § 1320.12 or § 1320.14. The agency may continue to sponsor the collection of information while the submission is pending. For good cause, OMB may stay the effectiveness of its approval of any collection of information not specifically required by agency rule, whereupon the agency shall cease sponsoring such collection while the submission is pending, and shall publish a notice in the Federal Register to that effect.

(e) Whenever the persons to whom a collection of information is addressed are primarily educational agencies or institutions or whenever the purpose of such activities is primarily to request information needed for the management or formulation of policy related to federal education programs, or research or evaluation studies related to implementation of federal education programs, the collection of information shall be submitted to OMB in accordance with the procedures outlined in this Part. Such request or requirement will be reviewed by the Federal Education Data Acquisition Council (FEDAC) prior to approval or disapproval by OMB. Collections of information submitted to the Secretary of Education under the provisions of Title 20 U.S.C. 1221-3 shall be submitted by the Secretary of Education to OMB for approval in accordance with procedures contained in this Part, in time to receive OMB approval and to be announced publicly by the agency by the February 15 preceding the school year in which the information is to be collected.

(f) No substantive or material modification may be made by an agency in an information collection request or

requirement after it has been assigned an OMB control number unless the modification has been submitted to OMB for review and approval pursuant to the procedures outlined in this Part.

(g) OMB will reconsider its disapproval of a collection of information upon the written request of an agency head or Senior Official only if the sponsoring agency can provide significant new or additional information relevant to the original decision.

(h) For purposes of time limits for OMB review of collections of information, any submission received by OMB after 12:00 noon will be deemed to have been received on the following business day.

**§ 1320.12 Clearance of information collection requests.**

Agencies shall submit all collections of information, other than those contained in rules, in accordance with the following requirements:

(a) Each submission shall provide sufficient information to permit consideration of the criteria specified in § 1320.4(b). The submission shall include an estimate of burden, calculated in a manner prescribed by OMB, and shall identify any significant burdens placed on a substantial number of small businesses or other small entities.

(b) On or before the day of submission to OMB, the agency shall forward a notice to the Federal Register stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed information collection request and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(c) With 60 days of its receipt of a proposed information collection request, OMB shall notify the agency involved of its decision to approve or disapprove the request and shall make such decision, together with the agency's estimate of burden per respondent, publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of an information collection request, OMB shall assign a control number and an expiration date. OMB shall not approve any information collection request for a period longer than three years.



(d) If OMB fails to notify the agency of its approval, disapproval, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year.

(e) In determining whether to approve or disapprove an information collection request, OMB shall consider any public comments received, and may provide the agency and other interested persons additional opportunities to be heard or to submit statements in writing.

(f) No information collection request may become effective until the agency has displayed a valid OMB control number (and, where OMB determines it to be appropriate, an expiration date).

**§ 1320.13 Clearance of information collection requirements in proposed rules.**

Agencies shall submit information collection requirements contained in proposed rules published for public comment in the *Federal Register* in accordance with the following requirements:

(a) The agency shall include in the preamble to the Notice of Proposed Rulemaking a statement that the information collection requirements contained in the rule have been submitted to OMB for review under Section 3504(h) of the Act. The statement shall direct comments to the agency and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the *Federal Register*, in such form and in accordance with such procedures as the Director may direct. Such submissions shall include a copy of the proposed regulation and preamble and an estimate of burden calculated in a manner prescribed by OMB, and shall identify any significant burdens placed on a substantial number of small businesses or other small entities. Agencies shall provide such additional information as OMB may request to permit consideration of the criteria specified in § 1320.4(b).

(c) With 60 days of publication of the proposed rule, OMB may file public comments on information collection provisions. Such comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee.

(d) When the final rule is published in the *Federal Register*, the agency shall

explain how the final rule conforms to OMB's comments, including an identification and explanation of any modifications made in the rule, or explain why it rejected those comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(e) Upon publication, the agency shall submit the final rule to OMB. Within 60 days after publication of the final rule, OMB shall approve or disapprove the information collection requirement contained in the final rule. Any such disapproval may be based on one or more of the following reasons, as determined by OMB, and no others:

(1) The agency failed to comply with paragraph (b) above;

(2) The agency had substantially modified the information collection requirement contained in the final rule from that contained in the proposed rule, without providing OMB with notice of the change and sufficient information to make a determination concerning the modified information collection requirement, at least 60 days before publication of the final rule; or

(3) In cases where OMB had filed public comments pursuant to paragraph (d) above, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(f) After making such decision to approve or disapprove an information collection requirement, OMB shall so notify the agency. If OMB approves the information collection requirement, or if it has not acted upon the submission within the time limits of this Section, OMB shall assign a control number. If OMB disapproves the information collection requirement, it shall make the reasons for its decision publicly available.

(g) OMB shall not approve any information collection requirement for a period longer than three years. Approval of any collection of information contained in an agency rule submitted under this Section will be for the full three-year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(h) After receipt of notification of OMB's approval, disapproval, or failure to act, and prior to the effective date of the rule, the agency shall publish a notice in the *Federal Register* to inform the public of OMB's decision. If OMB has approved or failed to act upon the information collection requirement, the agency shall include the OMB control number in such notice. The portion of the final rule pertaining to the collection

of information may not become effective until OMB has assigned a control number, and such number is displayed.

(i) If OMB has not filed public comments pursuant to § 1320.13(c), or has approved the information collection requirement contained in a final rule before it is published in the *Federal Register*, OMB may assign a control number prior to publication of the final rule, and the agency may display the number in its publication of the final rule.

**§ 1320.14 Information collection requirements in existing regulations.**

Agencies shall submit reporting and recordkeeping requirements in existing rules that were adopted after public notice and comment in accordance with the following requirements:

(a) Information collection requirements not previously reviewed by OMB or the General Accounting Office, and not assigned currently valid control numbers, shall be submitted to OMB for review prior to July 1, 1983. Agencies shall submit all other information collection requirements contained in agency rules not later than 90 days before the expiration date assigned to the requirement.

(b) Each submission shall provide sufficient information to permit consideration of the criteria specified in § 1320.4(b). The submission shall include an estimate of burden, calculated in a manner prescribed by OMB, and shall identify any significant burdens placed on a substantial number of small businesses or other small entities.

(c) On or before the day of submission to OMB, the agency shall forward a notice to the *Federal Register* stating that OMB review is being sought. The notice shall direct requests for information, including copies of the information collection requirement and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the *Federal Register*, together with the date of expected publication, shall be included in the agency's submission to OMB.

(d) Within 60 days of its receipt of an information collection requirement, OMB shall notify the agency involved of its decision whether to approve or to initiate proposals for change in the requirement and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of an information collection requirement,

OMB shall assign a control number and an expiration date. OMB shall not approve any information collection requirement for a period longer than three years.

(e) If OMB fails to notify the agency of its approval, decision to initiate proposals for change, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year.

(f) In determining whether to approve or to initiate proposals for change in an information collection requirement, OMB shall consider any public comments received, and may provide the agency and other interested persons additional opportunities to be heard or to submit statements in writing.

(g) If OMB has notified the agency of a decision to initiate proposals for change in the information collection requirement, it shall extend the existing approval of the requirement for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the information collection requirement in the final rule under § 1320.13(e). The agency shall publish a notice in the Federal Register to inform the public that OMB has initiated proposals for change in the regulation, and has extended its approval of the information collection requirement.

(h) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, publish a notice of proposed rulemaking in the Federal Register, in compliance with the Administrative Procedure Act and other applicable law. Such notice shall identify all information collection requirements in the regulation, and shall solicit public comment on retention, modification, or rescission of such requirements. Publication of such notice in the Federal Register shall initiate OMB clearance procedures under Section 3504(h) of the Act and § 1320.13.

#### § 1320.15 Collections of information prescribed by another agency.

(a) Any collection of information prescribed by an agency and to be adopted as a Standard or Optional Form after approval by the General Services Administration (GSA) shall be submitted to OMB for approval through GSA's Automated Data and Telecommunications Service (ADTS) in accordance with such procedures and in such form as the Director may prescribe.

(1) Standard and Optional Forms used for the collection of information must be approved by OMB and assigned a currently valid control number before they can be used.

(2) GSA, with the assistance of the agencies using the forms, shall submit annually to OMB a list of all Standard and Optional Forms for the collection of information from the public, stating which agencies use these forms, the number of each form used by each agency, and an estimate of the burden required to complete each form. Burden estimates developed by GSA will be counted as burden imposed by each agency in proportion to the use of the form.

(b) Any other collections of information prescribed by an agency but collected by another agency or agencies shall be submitted to OMB for approval by the agency that prescribes the collection, in accordance with such procedures and in such form as the Director may prescribe. With the assistance of the agencies collecting the information, the agency making the submission shall inform OMB of which agencies collect the information and an estimate of the burden of the collection of information. Burden estimates developed by the submitting agency will be counted as burden imposed by each agency in proportion to their use of the information.

(c) In other respects, collections of information under this Section shall be treated under the standards and procedures of § 1320.11-14, as appropriate.

#### § 1320.16 Interagency reporting.

In accordance with authorities in the Act, the Federal Records Act, and the Budget and Accounting Procedures Act, the General Services Administration (GSA) is directed to issue regulations or requirements for the management of interagency reporting and provide for the approval and clearance of interagency reporting, whether mandatory or voluntary. Upon request, GSA shall report to the Director on the status of interagency reporting. Judicial branch requirements contained in court orders or decrees and OMB and other Executive Office of the President requirements shall be exempt from the provisions of this section.

#### § 1320.17 Emergency processing.

An agency head or the Senior Official may request emergency processing of proposed collections of information.

(a) Any such request shall be accompanied by a written determination that the collection of information is essential to the mission of the agency,

and that public harm will result if normal clearance procedures are followed or that an unanticipated event has occurred which will prevent or disrupt the collection of information or cause a statutory deadline to be missed if normal procedures are followed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practical steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) OMB shall approve or disapprove each such submission within the time period stated under § 1320.17(b), provided such time period is consistent with the purposes of the Act.

(e) If OMB approves the collection of information it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

#### § 1320.18 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. The provisions of this paragraph, and the requirements for publication of notice in § 1320.11(d) and § 1320.12(b), may be modified or waived by the Director to the extent that public participation in the approval process would defeat the purpose of the collection of information, violate state or federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

(b) Before collecting information from the public, the agency shall take reasonable steps to inform potential respondents of the identity of the federal agency sponsoring any collection of information, why the information is being collected, how it is to be used, whether responses to the request are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority), and the nature and extent of confidentiality to be provided, if any, (citing authority). Failure of an agency to comply with the requirements of this paragraph shall not be grounds for any person to fail to comply with a collection of information.

#### § 1320.19 Independent regulatory agency override authority.

An independent regulatory agency may override OMB's disapproval or stay of effectiveness of approval of a

collection of information by majority vote of its members or commissioners. The agency shall certify any such override to the Director, and shall explain in writing its reasons for exercising the override authority. OMB shall assign an OMB control number, valid for the length of time requested by the agency, up to three years, to any information collection request or requirement as to which this authority is exercised. The agency shall thereupon display the OMB control number.

**§ 1320.20 Other authority.**

(a) The Director or his designee shall determine whether any collection of information or other matter is within the scope of the Act, or of this Part.

(b) In appropriate cases, after consultation with the agency, the Director may initiate a rulemaking proceeding to determine with statutory standards. Such proceedings shall be in accordance with informal rulemaking procedures under Title 5 U.S.C. Chapter 5.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

(d) To the extent permitted by law, the Director may waive any requirements contained in this Part.

[FR Doc. 82-24634 Filed 9-2-82; 12:52 pm]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. AO-352-A4]

#### Olives Grown in California; Decision on Proposed Further Amendment of the Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision would amend the Federal marketing agreement and order for olives grown in California. Olive producers will be given the opportunity to vote in a referendum to determine if they favor the proposed changes in the marketing order. The proposed amendment would permit handlers to credit expenses for brand advertising of olives against a portion of their annual assessment obligation. The intent of the proposed change is to improve the effectiveness of the program.

**DATE:** The representative period for purposes of the referendum herein ordered is September 1, 1981, through February 28, 1982.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, Acting Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Room 2532-S, Washington, D.C. 20250, telephone (202) 447-5975.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing, issued November 13, 1981, published November 18, 1981 (46 FR 56620). One the basis of the hearing record, the issues were divided into two parts. With respect to material issues other than assessment crediting for handler paid advertising, the following documents were issued: Notice of Recommended Decision, issued May 7, 1982, published May 13, 1982 (47 FR 20593); Final Decision, issued June 14, 1982, published June 18, 1982 (47 FR 26394); and the Order Further Amending the Order, issued July 27, 1982, published July 30, 1982 (47 FR 32905). The Recommended Decision, with respect to assessment crediting was issued July 19, 1982, published July 22, 1982 (47 FR 31696).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291 and Secretary's Memorandum 1512-1.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California olive crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

#### List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

#### Preliminary Statement

A public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932, 47 FR 32905), regulating the handling of olives grown in California. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), in Fresno, California, on December 8 and 9, 1981, pursuant to notice thereof.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on July 21, 1982, filed with the Hearing Clerk, U.S. Department of Agriculture, the recommended decision containing the notice of the opportunity to file written exceptions thereto. No exceptions were received.

The material issues, findings, and conclusions, rulings and general findings of the recommended decision set forth in the July 22, 1982 issue of the *Federal Register* (47 FR 31696; FR Doc. 82-19896) are hereby incorporated herein and made a part hereof, subject to the following correction: change "previous" to "previous" on page 31698, column 2, line 57.

**Marketing agreement and order.** Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Further Amended, Regulating the Handling of Olives Grown in California", and "Order amending the order, as amended, regulating the handling of olives grown in California", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

**It is hereby ordered,** That this entire decision, except the annexed marketing agreement, be published in the *Federal Register*. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

**Referendum order.** It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order, as amended, and as hereby proposed to be further amended, regulating the handling of olives grown in California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production area of the regulated commodity for market.

The representative period is hereby determined to be September 1, 1981, through February 28, 1982.

The agent of the Secretary to conduct such referendum is hereby designated to be Richard Van Diest, Fruit and Vegetable Division, Agricultural Marketing Service, 1130 "O" Street, Fresno, California 93721.